



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/676,760 10/02/00 ANDERSON

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EXAMINER

QM02/0228

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SALT LAKE CITY UT 84124

HOOK, J ART UNIT	PAPER NUMBER
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3752
DATE MAILED:

02/28/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/676,760

Applicant(s)
Anderson

Examiner
James F. Hook

Group Art Unit
3752



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-3 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-3 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Drawings

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Specification

2. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

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3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because it is not provided on a separate sheet of paper and does not follow the normal US practice of describing the invention and not how it helps solve a problem as set forth in paragraph 2 above. Correction is required. See MPEP § 608.01(b).

5. The disclosure is objected to because of the following informalities: the last 3 paragraphs of the specification are typed all in capital letters which should be changed to normal type, no new matter should be entered.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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7. Claims 1-3 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

8. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, the use of the term "means" without an attached function is improper when the language is indefinite and the scope of the claim cannot be determined. Also in claim 1, the phrase "etc." is open ended and could include any various indefinite number of materials and therefore is considered indefinite where the scope of the claim cannot be determined. In claim 1, line 17, the use of the word "hose (s)" is indefinite when it has not been set forth how many hoses are being claimed and therefore the word is indefinite. Claim 1 also has a number of periods which make the claim more than one sentence which is improper. See the enclosed patents to see how to write a proper claim in single sentence form only, where all the structure of the apparatus should be positively claimed, and provided antecedent basis, along with how the parts relate to one another to form a working apparatus. Claims 2 and 3 are indefinite where they set forth no

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structure of the apparatus but merely set forth intended use of the apparatus which is indefinite where the claims have no structure of the apparatus claimed in these claims.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kopp in view of Bornhoffer. The patent to Kopp discloses the recited apparatus for protecting a hose comprising a molded rubber polymer sleeve 20 which is sized such that it may be hand held, has a diameter to accommodate a tube 15 therein, where an end may be flared 22, where one end can be formed to have friction with the inner tube near clamp 18. The patent to Kopp discloses all of the recited structure with the exception of providing a slot to allow the sleeve to be placed over the hose through the slot, where the slot can be formed obliquely, however such is not properly recited and therefore it is not clear if such is a requirement or merely a suggestion. The patent to Bornhoffer discloses the recited hose protector sleeve 20 which can be formed with a slot to allow the tube to be inserted therein, and where the slot can take many forms, of which forming it obliquely would be an obvious choice of mechanical design. The use of the apparatus as set forth in claims 2 and 3 is merely intended use and provides no structure to the apparatus claims, and

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therefor have no patentable weight. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

It would have been obvious to one skilled in the art to modify the tube protector in Kopp by providing a slot to allow it to be more easily placed on a tube as suggested by Bornhoffer.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to McDaniel, Swisher, Ritzmann, Franklin, Miller, Almeida, Tisbo, and Koteskey disclosing state of the art hose protectors.

Pro Se Applicant's Response to this Action

Certificate of Mailing

12. It is called to applicant's attention that if a communication is mailed before the response time has expired applicant may submit the response with a "Certificate of Mailing" which merely asserts that the response is being mailed on a given date. So mailed, before the period for response has lapsed, the response is considered timely.

A suggested format for a certificate follows.

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"I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on ..."

Name of applicant, assignee, or Registered Representative

Signature _____

Date _____

13. In response to this Office Action, Applicant is referred to chapter 714 of the Manual of Patent Examining Procedures (MPEP) .

For applicant's reference, sections of chapter 714 are recited below: (for more details, applicant is advised to review chapter 714 for a complete text):

14. Applicant is reminded that MPEP 714 states:

714 Amendments, Applicant's Action

37 CFR 1.115. Amendment.

The applicant may amend before or after the first examination and action and also after the second or subsequent examination or reconsideration as specified in 1.112 or when and as specifically required by the examiner. The patent owner may amend in accordance with 1.510(e) and 1.530(b) prior to reexamination, and during reexamination proceedings in accordance with 1.112 and 1.116.

See also MPEP @ 714.12.

For amendments in reexamination proceedings see MPEP @ 2250 and @ 2266.

15. Applicant is reminded that the Amendment should be signed. MPEP 714.01 also states:

714.01 Signatures to Amendments

To facilitate any telephone call that may become necessary, it is recommended that the complete telephone number with area code and extension be given, preferably near the signature. Note MPEP @ 605.04 to @ 605.05(a) for a discussion of signatures to the application.

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16. Applicant is reminded what is in a response to the Office Action. MPEP 714.02 states:

714.02 Must Be Fully Responsive

37 CFR 1.111. Reply by applicant or patent owner.

(a) After the Office action, if adverse in any respect, the applicant or patent owner, if he or she persists in his or her application for a patent or reexamination proceeding, must reply thereto and may request reconsideration or further examination, with or without amendment.

(b) In order to be entitled to reconsideration or further examination, the applicant or patent owner must make request therefor in writing. The reply by the applicant or patent owner must distinctly and specifically point out the supposed errors in the examiner's action and must respond to every ground of objection and rejection in the prior Office action. If the reply is with respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated. The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the case to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.

(c) In amending in response to a rejection of claims in an application or patent undergoing reexamination, the applicant or patent owner must clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. He or she must also show how the amendments avoid such references or objections. (See 1.135 and 1.136 for time for reply.)

In all cases where response to a requirement is indicated as necessary to further consideration of the claims, or where allowable subject matter has been indicated in an application, a complete response must either comply with the formal requirements or specifically traverse each one not complied with.

Drawing and specification corrections, presentation of a new oath and the like are generally considered as formal matters. However, the line between formal matter and those touching the merits is not sharp, and the determination of the merits of a case may require that such corrections, new oath, etc., be insisted upon prior to any indication of allowable subject matter.

37 CFR 1.119. Amendment of claims.

The claims may be amended by canceling particular claims, by presenting new claims, or by rewriting particular claims as indicated in 1.121. The requirements of 1.111 must be complied with by pointing out the specific distinctions believed to render the claims patentable over the references in presenting arguments in support of new claims and amendments.

An amendment submitted after a second or subsequent non-final action on the merits which is otherwise responsive but which increases the number of claims drawn to the invention previously acted upon is not to be held non-responsive for that reason alone. (See 37 CFR 1.112, MPEP @ 706.)

The prompt development of a clear issue requires that the responses of the applicant meet the objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP @ 706.03(n).

An amendment attempting to "rewrite" a claim in the manner set forth in 37 CFR 1.121(b) may be held non-responsive if it uses parentheses, (), where brackets, [], are called for; see MPEP @ 714.22.

Responses to requirements to restrict are treated under MPEP @ 818.

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17. Applicant is reminded to point out patentable novelty. MPEP 714.04 states:

714.04 Claims Presented in Amendment With No Attempt To Point Out Patentable Novelty

In the consideration of claims in an amended case where no attempt is made to point out the patentable novelty, the claims should not be allowed. (See 37 CFR 1.111, MPEP @ 714.02.)

An amendment failing to point out the patentable novelty which the applicant believes to exist in his case may be held to be non-responsive and a time limit set to furnish a proper response if the statutory period has expired or almost expired (MPEP @ 714.03). However, if the claims as amended are clearly open to rejection on grounds of record, a final rejection should generally be made.

18. Applicant is reminded the procedure to make Amendments

714.22 Entry of Amendments, Directions for

37 CFR 1.121. Manner of making amendments.

(a) Erasures, additions, insertions, or alterations of the Office file of papers and records must not be physically entered by the applicant. Amendments to the application (excluding the claims) are made by filing a paper (which should conform to 1.52), directing or requesting that specified

amendments be made. The exact word or words to be stricken out or inserted by said amendment must be specified and the precise point indicated where the deletion or insertion is to be made.

(b) Except as otherwise provided herein, a particular claim may be amended only by directions to cancel or by rewriting such claim with underlining below the word or words added and brackets around the word or words deleted. The rewriting of a claim in this form will be construed as directing the cancellation of the original claim; however, the original claim number followed by the parenthetical word "amended" must be used for the rewritten claim. If a previously rewritten claim is rewritten, underlining and bracketing will be applied in reference to the previously rewritten claim with the parenthetical expression "twice amended," "three times amended," etc., following the original claim number.

(c) A particular claim may be amended in the manner indicated for the application in paragraph (a) of this section to the extent of corrections in spelling, punctuation, and typographical errors. Additional amendments in this manner will be admitted provided the changes are limited to (1) deletions and / or (2) the addition of no more than five words in any one claim. Any amendment submitted with instructions to amend particular claims but failing to conform to the provisions of paragraphs (b) and (c) of this section may be considered non-responsive and treated accordingly.

(d) Where underlining or brackets are intended to appear in the printed patent or are properly part of the claimed material and not intended as symbolic of changes in the particular claim, amendment by rewriting in accordance with paragraph (b) of this section shall be prohibited.

(e) In reissue applications, both the descriptive portion and the claims are to be amended by either (1) submitting a copy of a portion of the description or an entire claim with all matter to be deleted from the patent being placed between brackets and all matter to be added to the patent being underlined, or (2) indicating the exact word or

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words to be stricken out or inserted and the precise point where the deletion or insertion is to be made. Any word or words to be inserted must be underlined. See 1.173.

(f) Proposed amendments presented in patents involved in reexamination proceedings must be presented in the form of a full copy of the text of (1) each claim which is amended and (2) each paragraph of the description which is amended. Matter deleted from the patent shall be placed between brackets and matter added shall be underlined. Copies of the printed claims from the patent may be used with any additions being indicated by carets and deleted material being placed between brackets. Claims must not be renumbered and the numbering of the claims added for reexamination must follow the number of the highest numbered patent claim. No amendment may enlarge the scope of the claims of the patent. No new matter may be introduced into the patent.

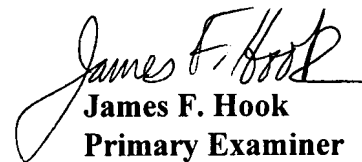
The term "brackets" set forth in 37 CFR 1.121(b) means angular brackets, thus: []. It does not encompass and is to be distinguished from parentheses (). Any amendment using parentheses to indicate canceled matter in a claim rewritten under 37 CFR 1.121(b) may be held non-responsive in accordance with 37 CFR 1.121(c).

Where, by amendment under 37 CFR 1.121(b), a dependent claim is rewritten to be in independent form, the subject matter from the prior independent claim should be considered to be "added" matter and should be underlined.

37 CFR 1.121(f) requires a complete copy of any new or amended claim when presented during reexamination proceedings. See MPEP @ 2221, @ 2250, and @ 2266. Form Paragraphs 6.33 and 6.34 may be used to inform applicants if the amendments are not in proper format.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Hook whose telephone number is (703) 308-2913.

J. Hook
February 26, 2001


James F. Hook
Primary Examiner
Art Unit 3752